

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
EL PASO DIVISION

CB RICHARD ELLIS - EL PASO, a Texas §
limited liability company, §
Plaintiff, §

-vs- §

CAMBRIDGE REALTY PARTNERS, §
LLC, a Connecticut limited liability §
company. §

Civil No. 3:03cv51(KC)

ORDER

Plaintiff moves pursuant Federal Rule of Civil Procedure 56(f) that this Court defer ruling on defendant's motion for summary judgment until the discovery deadline. Defendant opposes the deferral.

Rule 56(f), entitled "When Affidavits are Unavailable," provides as follows:

Should it appear from the affidavits of a party opposing the motion that the party cannot for reasons stated present by affidavit facts essential to justify the party's opposition, the court may refuse the application for judgment or may order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had or may make such other order as is just.

A party requesting further discovery pursuant to Rule 56(f) must (1) request extended discovery prior to a ruling on the motion for summary judgment, (2) notify this Court that further discovery relevant to the motion for summary judgment is sought, (3) demonstrate "specifically how the requested discovery pertains to the pending motion," and (4) diligently pursue the relevant discovery. *Wichita Falls Office Assocs. v. Banc One Corp.*, 978 F.2d 915, 919 (5th Cir. 1992).

In support of the above, plaintiff states that Judge Mesa has ordered defendant to produce additional discovery responses by December 4, 2003. Plaintiff further states that the deposition of a key witness is scheduled for January 15, 2004. Plaintiff argues that the requested recovery "goes to the heart of the parties' claims and defenses." As this Court is presently unaware of the

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arguments set forth in defendant's motion for summary judgment, plaintiff's general argument does not establish how the discovery sought is germane to its response to defendant's motion. Plaintiff's request, that this Court defer ruling on defendant's motion until the discovery deadline, now April 1, 2004, is not within the contemplation of Rule 56. A movant need not wait until the conclusion of discovery and may file a motion for summary judgment "at any time after the expiration of 20 days from the commencement of the action." FED. R. CIV. P. 56(a). Rule 56(f) serves only to afford a non-movant an opportunity to obtain discovery necessary to adequately respond to the motion.

In light of the above and the concerns inherent in Rule 56(f), plaintiff shall have until January 29, 2004 to serve its response on defendant or to serve a supplemental response to defendant's motion for summary judgment if a response has already been served. Plaintiff articulates no other justification requiring a more substantial extension. At the expiration of defendant's reply period, the motion shall be considered ripe for review.

Plaintiff's First Motion for Continuance (Doc. No. 62) is **granted in part** as consistent with the foregoing.

SO ORDERED.

Dated at El Paso, Texas, December 8, 2003.


Kathleen Cardone
United States District Judge